PUBLIC UTILITIES COMMISSION DEPARTMENT OF ENVIRONMENTAL PROTECTION

Joint Report

on

Standards Regarding the Use of Energy Infrastructure Corridors and Long-Term Contracting Authority

March 16, 2009

I. INTRODUCTION

During its 2008 session, the Legislature enacted An Act to Protect Maine's Energy Sovereignty through the Designation of Energy Infrastructure Corridors and Energy Plan Development ("Act")¹. Part A of the Act authorizes the Public Utilities Commission ("PUC or Commission") to designate energy infrastructure corridors and set parameters within which the Department of Environmental Protection ("DEP") and the PUC may allow development of energy infrastructure within such areas. Part B of the legislation amends a law enacted during the 2007 session that provided the Commission with the authority to direct transmission and distribution ("T&D") utilities to enter long-term contracts for capacity and associated energy.

On April 23, 2008, the Utilities and Energy Committee ("Committee") sent a letter to the PUC and DEP. This letter references the enactment of the Act and asks the PUC and the DEP to examine, in the context of the designation and use of energy infrastructure corridors and the use of long-term contracting, "the adoption of specific standards in support of the State's goals for greenhouse gas reduction and participation in the regional greenhouse gas initiative (RGGI)", and in particular, the adoption of standards for the following purposes:

- To further the climate change reduction goals adopted by the New England Governors and Eastern Canadian Premiers pursuant to the New England Governors/Eastern Canadian Premiers Climate Change Action Plan of 2001 including Maine's climate change reduction goals and plan under the Maine Revised Statutes Title 38, Chapter 3-A;
- To further the goals and purpose of Maine's participation in RGGI including the Regional Greenhouse Gas Initiative Act of 2007 under the Maine Revised Statutes, Title 38, Chapter 3-A; and
- To further the goals of maintaining and restoring ecosystem viability throughout the RGGI member states and the Eastern Canadian region.

The Committee requested that the PUC and DEP provide a report of the examination by March 15, 2009. As a vehicle for conducting the examination, the PUC, on June 23,

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¹ PL 2007, ch. 656.

2008, initiated an Inquiry² to solicit comments from interested persons. The following interested persons submitted comments in the Inquiry: Environment Northeast ("ENE"), the Natural Resources Council of Maine ("NRCM"), the Conservation Law Foundation ("CFL"), the Industrial Energy Consumer Group ("IECG"), Bangor Hydro- Electric ("BHE") and Maine Audubon ("MA").³

II. OVERVIEW

A. Energy Infrastructure Corridors

The Act provides the PUC the authority to designate energy infrastructure corridors. Energy infrastructure is defined to include electric transmission and distribution facilities, natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines and conduits. The process of designating a corridor may only occur through petition by the Public Advocate, the Office of Energy Independence and Security or a qualified developer and a corridor may only be designated through the adoption of major substantive rules. This required process ensures legislative review and approval of any PUC designated corridor.

Under the Act, the PUC may only designate an energy infrastructure corridor if it finds that future energy infrastructure within the corridor is reasonably likely to be in the public interest, taking into consideration:

- Encouraging collocation of energy infrastructure;
- Enhancing the efficient utilization of existing energy infrastructure; and
- Limiting impacts on the landscape.

The Commission must also find that development within the corridor is reasonably likely to be consistent with the State's environmental and land use laws and rules.

The Act also specifies that energy infrastructure may not be developed in a designated corridor unless the PUC issues a certificate of public convenience and necessity (for utility transmission projects) or a corridor use certificate (for all other energy infrastructure) and the DEP has issued a consolidated environmental permit approving the project. To issue a corridor use certificate, the PUC must find that the project is:

- In the public interest; and
- Reasonably likely to:
- Minimize utility rates or increase the reliability of utility service;
- Have a net effect of reducing the release of greenhouse gases; or
- Enhance economic development within the State.

² Inquiry into the Adoption of Standards in Support of Maine's Goals for Greenhouse Gas Reduction and Participation in the Regional Greenhouse Gas Initiative, Docket No. 2008-249 (June 23, 2008).

³ All comments submitted in the Inquiry are posted on the PUC's virtual case file on its webpage, www.maine.gov/mpuc, through reference to Docket No. 2008-196.

B. Long-Term Contracting

As stated above, the Act also amended the PUC's existing authority⁴ to direct T&D utilities to enter into long-term contracts for capacity and associated energy. Under this legislation, the Commission may authorize long-term contracts through periodic competitive solicitations in which the PUC is to select the lowest price proposals for the purpose of lowering and stabilizing electricity rates in the State. The legislation also established the following order of priority for choosing among capacity resources:

- (1) New interruptible, demand response or energy efficiency capacity resources located in this State:
- (2) New renewable capacity resources located in this State;
- (3) New capacity resources with no net emission of greenhouse gases;
- (4) New nonrenewable capacity resources located in this State. The commission shall give preference to new nonrenewable capacity resources with no net emission of greenhouse gases;
- (5) Capacity resources that enhance the reliability of the electric grid of this State. The Commission shall give preference to capacity resources with no net emission of greenhouse gases; and
- (6) Other capacity resources.

Among the Act's amendments to the long-term contracting authority was the addition of language requiring all contracts to be consistent with the State's greenhouse gas goals. Specifically, the following language was added:

The Commission shall ensure that any long-term contract authorized under this subsection is consistent with the State's goals for greenhouse gas reduction under Title 38, section 576 and RGGI as described in the state climate action plan required in Title 38, section 577.

III. INQUIRY COMMENTS

ENE, MA, CLF and NRCM suggested incorporating additional standards into the long-term contracting requirements. ENE commented that without standards, Maine may experience leakage with respect to the RGGI requirements, when generation from budget units inside the RGGI region is displaced by energy imported from jurisdictions located outside of the RGGI region that are not subject to any comparable regulation or carbon price impacts. ENE suggested creating a standard that allows contracting with units that are either 1) under a carbon dioxide regulation scheme comparable in price impact to RGGI or 2) if the budget unit is not in a jurisdiction that regulates carbon dioxide emissions, that it must purchase and retire a carbon dioxide allowance for every ton of

⁴ In its 2007 session, the Legislature enacted an Act To Enhance Maine's Energy Independence and Security, PL 2006, ch. 677. This legislation authorized the PUC to direct T&D utilities to enter into long-term contracts as specified in the Act.

associated carbon dioxide emissions from the energy. NRCM supported ENE's proposed standards. CFL suggested adopting output based greenhouse gas emission standards that are consistent with the phased reduction of RGGI's cap. IECG agreed that any standards established should be consistent with the statutory scheme of RGGI. Additionally, IECG stated that as enacted RGGI has the maximum effect on emissions without unnecessary impacts on customers and that the consensus that was reached for that legislation should be respected. BHE referred to previous comments in other proceedings in which it expressed concern regarding potential negative financial impacts on the utility that can result from long term contracts.

In regards to energy infrastructure corridors and environmental impacts, including carbon dioxide emissions, CLF and MA commented that standards should at least have the equivalent level of protection provided by the Land Use Regulation Commission policies, the Clean Water Act, state and federal Endangered Species Acts and all state and federal fish passage requirements, as well as protecting wetlands, freshwater, estuarine and marine fisheries, rare invertebrates, including freshwater mussels, water quality, significant vernal pools, wildlife travel corridors, high and moderate value wading bird and waterfowl habitat, shorebird roosting, feeding and staging areas; and rare and exemplary natural communities. They also suggested, with ENE, that any corridor proposal that claims to be reasonably likely to limit impacts on the landscape or greenhouse gas emissions should be required to submit an alternatives analysis.

IV. <u>DISCUSSION</u>

The energy infrastructure corridor and the long-term contracting legislation were both carefully crafted and are comprehensive and detailed in nature. The legislative language and underlying intent provide clear direction that the granted authority be exercised to promote the State's greenhouse gas policies and, at a minimum, may not be exercised to frustrate such goals and policies. The corridor legislation is intended to establish corridors in environmentally appropriate areas and to encourage development of energy infrastructure in those areas. A corridor may only be designated upon a finding that development within the corridor is reasonably likely to be consistent with environmental and land use laws and rules. Development within a corridor may only be authorized upon the DEP issuance of a consolidated environmental permit and PUC consideration of the impact of development within the corridor on the release of greenhouse gases.

As stated above, the long-term contracting legislation contains a priority list that gives preference to the most environmentally benign capacity resources. In addition, specific language has been added to require that all long-term contracts be consistent with the State's greenhouse gas reduction policies.

Thus, the energy infrastructure corridor and the long-term contracting legislation represent a legislatively determined balance of policy goals. The Legislature may, as a matter of State energy policy, decide to alter the balance and establish different priorities. The Committee's April 28, 2008 letter specifies a variety of standards to be considered by the PUC and the DEP. For the most part, these standards relate to State greenhouse gas reduction goals and policies. One stated standard in the April 28th letter, however, references the goals of maintaining and restoring ecosystems viability throughout the RGGI member states and Eastern Canadian region. This standard suggests that the

energy corridor and long-term contracting legislation would be implemented by the PUC and the DEP so as to consider environmental policies in other northeast states and eastern Canadian provinces. The ecological impacts of improperly planned and sited electrical generation and associated infrastructure, including transmission, can be substantial, permanent and irreparable. The State has a direct interest in ensuring that new electrical generation and transmission infrastructure, regardless of its location within Maine, does not degrade ecological systems and wildlife populations that cross state and international borders and that inhabit and use Maine's forested, aquatic and marine systems.

Maine's interest is best expressed in a standard that could be implemented by Maine environmental regulators to ensure that no unreasonable impact on Maine's ecological systems and the populations that use these systems during their life cycles occurs. Such a standard could be implemented through a submission requirement for all applicable environmental impact statements, and/or materials submitted during project review in the relevant jurisdiction showing that the energy project will not have an unreasonable adverse impact on Maine ecosystems and fish and wildlife populations. Such a finding is relevant to assessing the various factors that should be considered in deciding whether the State will enter in arrangements for long-term power purchase agreements and/or permit transmission projects that important power from out-of-state.

V. CONCLUSION

The PUC and DEP view the energy infrastructure and long-term contracting legislation as providing a clear indication of policy goals that must guide agency implementation of the granted authority, including a firm direction that the legislation must not be implemented in any way that might frustrate the State's greenhouse gas goals and policies. A decision to change the balance or priorities embodied in the energy infrastructure and long-term contracting legislation is an issue of energy policy for the Legislature and therefore the PUC and DEP take no position on fundamental changes to the goals and priorities of the legislation.